

Sec. 7. (a) If ~~the provisions an exemption~~ listed in section 6 of this rule does not apply ~~and the existing or proposed new discharger proposing to cause a significant lowering of water quality in an OSRW does not elect to utilize the provisions in subsection (i),~~ a person the existing or proposed new discharger proposing a new or increased discharge must submit an antidegradation demonstration to the commissioner in accordance with this section before applying for a facility construction permit pursuant to 327 IAC 3, if applicable, or for a new, renewed, reissued, or modified control document.

(b) All antidegradation demonstrations shall contain the following elements:

(1) An identification of all pollutants for which the antidegradation demonstration is required, including the mass and concentration proposed to be discharged.

(2) An identification and characterization of the water body(ies) affected by the proposed load increase that addresses the physical, biological and chemical conditions of the water body.

(23) An identification of measures available to the existing or proposed discharger to minimize or prevent the proposed lowering of water quality. A separate analysis shall be performed for each pollutant for which there may be significant lowering of water quality. Each analysis shall include the following:

(A) Any ~~cost-effective~~ pollution prevention alternatives (including new and innovative technologies and means to avoid the new discharge) and techniques available to the existing or proposed discharger that would minimize or prevent the proposed significant lowering of water quality, the effluent concentrations attainable by the alternatives and techniques, and their costs relative to the cost of treatment necessary to achieve applicable effluent limitations.

(B) Alternative or enhanced treatment techniques available to the existing or proposed discharger that would minimize or prevent the proposed significant lowering of water quality, the effluent concentrations attainable by the alternatives and enhanced treatment techniques, and their costs relative to the cost of treatment necessary to achieve applicable effluent limitations. This analysis shall include an evaluation of the feasibility and costs of connecting to an existing publicly or privately owned treatment works.

(43) Documentation showing that the existing or proposed discharger has made a good faith effort to provide notice to all government or privately sponsored conservation projects that have specifically targeted improved water quality or enhanced recreational opportunities on the proposed receiving water body in the area of the new or increased discharge. The notice shall include a list of the parameters for which a significant lowering of water quality is proposed.

(4) An identification of the current concentration and projected concentration, if lowering is allowed, of any bioaccumulative chemicals of

~~concern (BCCs) for which the antidegradation demonstration is being submitted.~~

~~(c) For publicly owned treatment works (POTWs), if the proposed significant lowering of water quality is a result of a proposed new or increased discharge from one (1) or more indirect dischargers, the antidegradation demonstration shall also include the following:~~

~~(1) The requirements of subsection (b)(2)(A) and (b)(2)(B) shall be completed for the indirect discharger(s) as well as for the POTW. The POTW may require the indirect dischargers to prepare this information.~~

~~(2) If one (1) or more of the indirect dischargers proposes or does discharge to a combined sewer (or to a sanitary sewer that is connected to a combined sewer), all combined sewer overflows (CSOs) between the point of discharge to the sewer and the POTW shall be identified.~~

~~(cd) Except as provided in paragraph (d), For dischargers that are not POTWs and for POTWs for which the proposed significant lowering of water quality is a result of a proposed new or increased discharge from one (1) or more indirect dischargers, the antidegradation demonstration shall also contain an evaluation of the positive and negative social or economic development impacts to the area in which the receiving waters are located that will occur if the significant lowering of water quality is allowed. The POTW may require the indirect dischargers to prepare this information. This evaluation shall include the following:~~

~~(1) An evaluation of the baseline economic condition, including the following:~~

~~(A) The unemployment rate in the area.~~

~~(B) The population in the area.~~

~~(C) The average household income relative to state and national averages.~~

~~(D) The percentage of the population living below the poverty level.~~

~~(2) Information on the anticipated net positive impacts attributable to the activity that will result in the new or increased discharge, including the following:~~

~~(A) The increase in employment, or avoidance of a reduction in employment at the facility.~~

~~(B) The reduction in the local unemployment rate attributable to the facility.~~

~~(C) The total annual payroll of nonofficers for the new or increased employment, and the average annual wage for the new, nonofficer employees. In lieu of this information, the applicant may provide other information that quantifies the extent of the economic benefit to be provided to the area.~~

~~(D) The increased tax revenues.~~

~~(E) The increase in production level.~~

~~(F) The increase in efficiency.~~

(G) The extent to which an environmental or public health problem is corrected.

(H) Industrial, commercial, or residential growth in the community.

(I) Other social or economic benefits to the community.

(d) Dischargers of domestic waste shall provide the information specified in (c) above if they propose

(1) a significant lowering of water quality as the result of a proposed new or increased discharge from one (1) or more indirect dischargers. The discharger of domestic waste may require the indirect discharger(s) to prepare this information. If one (1) or more of the indirect dischargers proposes or does discharge to a combined sewer (or to a sanitary sewer that is connected to a combined sewer), all combined sewer overflows (CSOs) between the point of discharge to the sewer and the discharger of domestic waste shall be identified.

(2)

[WE NEED TO DRAFT A DEFINITION OF “DISCHARGER OF DOMESTIC WASTE”. Also we need to spell out other situations where more information must be provided by dischargers of domestic waste and what they must provide]

(e) In lieu of the information required by subsections (b) through (d), dischargers proposing:

(1) a response action pursuant to CERCLA;

(2) a corrective action pursuant to RCRA; or

(3) an action pursuant to similar federal or state authorities, including:

(A) an underground storage tank (UST) corrective action under IC 13-23-13;

(B) a remediation of petroleum releases under IC 13-24-1;

(C) a voluntary remediation under IC 13-25-5; or

(D) an abatement or correction of any polluted condition under IC 13-18-7;

may submit information to the commissioner demonstrating that the action minimizes the proposed lowering of water quality and will use the most cost effective pollution prevention and treatment techniques available.

(f) Upon receipt of an antidegradation demonstration by a discharger that [], the commissioner shall provide notice, request comment, and [shall?] may, if requested, schedule and hold a public meeting on the application in accordance with section 10 of this rule. The commissioner shall quantify the increased risk to human health due to new or increased discharges of BCCs. This information shall be available for inspection and copying as a public record before the public meeting is held.

(g) Once the commissioner determines that the information provided by the discharger proposing a new or increased discharge is administratively complete, the commissioner shall make an antidegradation determination in accordance with the following:

(1) The commissioner shall deny the request to lower water quality if:

(A) cost-effective measures necessary to prevent the proposed lowering are reasonably available; or

(B) the action that would cause the lowering would not support important social and economic development in the area.

~~(2) If the legislative body of the unit of government in which the proposed discharge outfall is located determine the action that will cause the lowering will support important social and economic development in the area, in accordance with this section, the commissioner may allow all or part of the proposed lowering.~~

(23) The commissioner may approve activities that lower water quality only if there has been an examination of non-degradation, minimal degradation and mitigative technique alternatives, a review of the social and economic issues related to the activity, a public participation process and appropriate intergovernmental coordination, and the commissioner determines that the lower water quality is necessary to accommodate important social or economic development in the area in which the water body is located. The commissioner may require the applicant to implement a non-degradation alternative, a minimal degradation alternative or a mitigative technique alternative to offset all or part of the proposed lowering of water quality, if the commissioner determines that the alternative is technically feasible and economically justifiable. In no event may the determination allow water quality to be lowered below the minimum level required to fully support existing and designated uses.

When making determinations regarding proposed activities that lower water quality the commissioner shall consider the following:

(a) The magnitude of the proposed lowering of water quality;

(b) The anticipated impact of the proposed lowering of water quality on aquatic life and wildlife, including threatened and endangered species, important commercial or recreational sport fish species, other individual species and the overall aquatic community structure and function;

(c) The anticipated impact of the proposed lowering of water quality on human health and the overall quality and value of the water resource;

(d) The degree to which water quality may be lowered in waters located within national, state or local parks, preserves or wildlife areas;

(e) The effects of lower water quality on the economic value of the water body for recreation, tourism and other commercial activities, aesthetics, or other use and enjoyment by humans;

(f) The extent to which the resources or characteristics adversely impacted by the lowered water quality are unique or rare within the locality or state;

(g) The cost of the water pollution controls associated with the proposed activity;

(h) The cost effectiveness and technical feasibility of the non-degradation alternatives, minimal degradation alternatives or mitigative technique alternatives and the effluent reduction benefits and water quality benefits associated with such alternatives;

(i) The availability, cost effectiveness, and technical feasibility of central or regional sewage collection and treatment facilities, including long-range plans outlined in state or local water quality management planning documents and applicable facility planning documents;

(j) The availability, reliability and cost effectiveness of any non-degradation alternative, minimal degradation alternative or mitigative technique alternative;

(k) The reliability of the preferred alternative including, but not limited to, the possibility of recurring operational and maintenance difficulties that would lead to increased degradation;

(l) The condition of the local economy, the number and types of new direct and indirect jobs to be created, state and local tax revenue to be generated, and other economic and social factors as the commissioner deems appropriate; and

(m) Any other information regarding the proposed activities and the affected water body that the commissioner deems appropriate ~~In no event may the determination allow water quality to be lowered below the minimum level required to fully support existing and designated uses.~~

(h) When the commissioner proposes an antidegradation determination, it shall be summarized in the public notice form and incorporated into the draft permit and the fact sheet that is made available for public comment under 327 IAC 5-3-9. A final antidegradation decision shall be incorporated into the final NPDES permit and fact sheet.

(i) In addition to ~~lieu of~~ the provisions in subsections (b) through (h), dischargers proposing to cause a significant lowering of water quality in an OSRW shall either can choose to follow the provisions in either subdivision (1) or subdivision (2) for each activity undertaken that will result in a significant lowering of water quality in an OSRW or exceptional use water.

(1) Implementation of a water quality project in the watershed of the outstanding state resource water or the exceptional use water that will result in an overall improvement of the water quality of the outstanding state resource water or the exceptional use water.

(2) Payment of a fee, not to exceed five hundred thousand dollars (\$500,000) based on the type and quantity of increased pollutant loadings for deposit in the outstanding state resource water improvement fund established under IC 13-18-3-14.

Existing or proposed new dischargers electing to follow the procedures in either subdivisions (1) or (2) must follow the public notice requirements under section 10.

[criteria for submitting and approval of projects in subdivision 1 & 2]

[use of water quality data that is less than 7 years old and specific to the OSRW]

[Criteria for using the watershed improvement fees to fund projects in the watershed that result in improvement in water quality in the outstanding state resource water or exceptional use water.]

(Water Pollution Control Board; 327 IAC 2-1.3-7)

327 IAC 2-1.3-8 Designation of a water body as an outstanding state resource water or outstanding national resource water

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-3-1; IC 13-18-3-2; IC 13-18-3-3; IC 13-18-4-1; IC 13-18-4-3

Affected: IC 13-14-8-4; IC 13-14-9; IC 13-18-3; IC 13-18-4; IC 14-29-6